



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AY/MNR/2019/0073**

Property : **50A Gracefield Gardens,
Streatham, London SW16 2ST.**

Applicant : **Mr. Robert Russell.**

Representative : **In person.**

Respondent : **GRIP Nomco's 1 and 2 Limited**

Representative : **Grainger Plc**

Type of application : **Decision in relation to section 13 of
the Housing Act 1988**

Tribunal member(s) : **Ms. A. Hamilton-Farey LLB, FRICS,
Mr. C. Piarroux JP CQSW.**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **6 August 2019.**

DECISION

Decision:

The Tribunal does not have jurisdiction to determine this application for the reasons stated below.

Background:

1. The tribunal received an application under section 13 of the Housing Act 1988 on 5 June 2019. The Notice of Increase accompanying that application was dated 29 April 2019 and informed the applicant tenant that the rent on his property would increase from £966.00 to £981.00 per calendar month, unless the tenant made an application to this tribunal before that rent came into effect on 1 June 2019.
2. The application was signed by the applicant on 17 May 2019, but was sent to the tribunal in an envelope that did not have the correct postage applied to it, with the consequence that the application could not be deemed to have been received until the tribunal paid the relevant postage and collected the item. This was done on the 5th June 2019, but by that time, the application was out of time.
3. Letters were sent to the parties regarding the tribunal's jurisdiction in this matter and representations sought. None have been received from the respondents. The applicant sent a cheque for the administration charges incurred by the tribunal in receiving the application (which has since been returned), and requested the tribunal consider the application to have been received in time.
4. The applicant's main reason for objecting to the rent increase appears to be on the basis that the rent should be 'capped' because further rent increases only add to inflation, and the degradation of local facilities.
5. In a letter of 3 July 2019, the applicant also referred to this matter being presented to the Rent Officer.
6. Having considered the matter this tribunal finds that it does not have jurisdiction to determine the rent for the property, with the effect that the rent increase notice is valid and took effect on 1 June 2019 as per the landlord's notice of increase.

Reasons:

7. The tenant requested the tribunal to exercise its discretion in this matter and said that the problem had been a mistake in relation to how postage was calculated.
8. The Housing Act 1988 allows for no discretion to be exercised by the tribunal, and this has been reinforced in case law, specifically *R (Lester) v LRAC [2003] 1 WLT 1995*, where Sedley J confirmed that any referral to the then Rent Assessment Committee (now the

Tribunal) had to be received by the tribunal before the effective date of the increase, and the committee had no discretion to allow late referrals to be determined.

9. 'Lester' has been further confirmed by the Upper Tribunal (Lands Chamber) in *Mr C. Robinson v Mrs. R. Gordon-Webb [2018] UKUT 0235(LC)*.
10. In applying the relevant law, the tribunal cannot exercise a discretion and the referral of the Notice of Increase was therefore received out of time, with the consequence that the tribunal does not have jurisdiction to determine a rent.
11. The tenant also referred to this matter being dealt with by the Rent Officer as a Fair Rent. The tribunal is unable to refer this matter to the Rent Officer in any event, but in this instance, it is clear that this tenancy commenced after 15 January 1989, and is therefore an assured shorthold tenancy, the rents of which are not subject to rent control.

The law:

S.14 Housing Act 1988 – Determination of rent by tribunal:

12. S.14(1) Where under subsection 14(a) of Section 13, a tenant refers to the tribunal a notice under subsection 13(2), the tribunal shall determine the rent at which, subject to subsection () and (4) below, the tribunal consider that, the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under the assured tenancy –
 - a. Which is a periodic tenancy having the same periods as those of the tenancy in which the matter relates;
 - b. Which begins at the beginning of the new period specified in the notice;
 - c. The terms of which, (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates, and
 - d. In respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

S.14(2) in deciding under this section there shall be disregarded;

(a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;

(b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement –

- Was carried out otherwise than in pursuance of (or an obligation to his immediate landlord, or
- Was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
- Any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.

14(7) Where a notice under S.13(2) above has been referred to the appropriate tribunal, then unless the landlord and the tenant otherwise agree, the rent determined by the tribunal ... shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the tribunal may direct.

Name: Aileen Hamilton-Farey **Date:** 6 August 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case

number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).



